

CHAPTER 137
FORMERLY
SENATE BILL NO. 96

AN ACT TO AMEND THE CHARTER OF THE CITY OF LEWES RELATING TO VOTER ELIGIBILITY IN SPECIAL ANNEXATION ELECTIONS AND INDEMNIFICATION OF CITY OFFICIALS AND EMPLOYEES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Section 3 of the Charter of the City of Lewes as follows:

Section 3.

In the event it becomes feasible and necessary for the future of the City of Lewes to enlarge its then existing limits and territory, such annexation accomplished with the following procedure shall be lawful:

(c) Not later than ninety (90) days following its appointment by the Mayor, as aforesaid, the committee shall submit a written report containing its findings and conclusions to City Council. The reports so submitted shall include the advantages and disadvantages of the proposed annexation both to the City and to the territory proposed to be annexed and shall contain the committee's recommendations whether or not to proceed with the proposed annexation and the reasons therefor. In the event that the committee appointed by the Mayor concludes that the proposed annexation is advantageous both to the City and to the territory proposed to be annexed, within sixty (60) days after receiving the report, a second Resolution shall then be passed by the City Council proposing to the property owners and leaseholders of both the city and the territory proposed to be annexed that the City proposes to annex certain territory contiguous to its then limits and territory. In the event that the committee appointed by the Mayor concludes that the proposed annexation is disadvantageous either to the City or to the territory proposed to be annexed, within thirty (30) days after receiving the report of the committee, the resolution proposing to the property owners and leaseholders of both the city and the territory proposed to be annexed shall be passed by the affirmative vote of two-thirds (2/3) of the elected members of the City Council. For purposes of this Section, "leaseholder" has the same meaning as provided in Section 1(b) of this Charter. If the resolution shall fail to receive the affirmative vote of two thirds (2/3) of the elected members of the City Council, the territory proposed to be annexed shall not again be considered for annexation for a period of one (1) year from the date that the resolution failed to receive the required affirmative vote. The second Resolution shall contain a description of the territory proposed to be annexed and shall fix a time and place for a public hearing on the subject of the proposed annexation. The resolution adopted by the City Council setting forth the above information shall be printed in a newspaper published in The City of Lewes at least one (1) week prior to the date set for the public hearing, or, if no newspaper is published in the City, publication shall be had in a newspaper having a general circulation both in the City and in the territory proposed to be annexed, or, at the discretion of the City Council, said resolution shall be posted in five (5) public places both in the City and in the territory proposed to be annexed.

Section 2. Amend Section 3 of the Charter of the City of Lewes as follows:

Section 3.

(f) At the Special Election every property owner, whether a natural or artificial person, including but not limited to partnership, trust, corporation, or limited liability company, both in The City of Lewes and in the territory proposed to be annexed, shall have one (1) vote. In the case of property owned by husband and wife jointly, the husband and wife shall each have one (1) vote. In the event that a natural or artificial person owns property or is a leaseholder both in The City of Lewes and in the territory proposed to be annexed, and resides in either place, he may vote only where he resides. In the event that a person owns property or is a leaseholder, or both, in both The City of Lewes and in the territory proposed to be annexed, but does not reside in either place, he may vote only in The City of Lewes and not in the territory proposed to be annexed. Property owners and leaseholders whose property is exempt from taxation or is not assessed for taxation shall not be entitled to vote. The books and records of The City of Lewes in the case of property owners or leaseholders of the City and the books and records of the Board of Assessment of Sussex County in the case of property owners or leaseholders of the territory proposed to be annexed shall be conclusive evidence of the right of such property owners and leaseholders to vote at the Special Election.

Section 3. Amend Section 3 of the Charter of the City of Lewes as follows:

Section 3.

(i) The Mayor shall appoint three (3) persons to act as a Board of Special Election, at least one (1) of whom must reside and be the owner or leaseholder, as defined herein, of property in the City, and at least one (1) of whom must reside and be the owner or leaseholder, as defined herein, of property in the territory proposed to be annexed. One (1) of said persons so appointed shall be designated the presiding officer. Voting shall be conducted in the City Hall and the Board of Election shall have available, clearly marked, two (2) ballot boxes. All ballots cast by those persons, partnerships or corporations authorized to vote as property owners or leaseholders, as defined herein, in the territory proposed to be annexed shall be deposited in one (1) such ballot box, and all ballots cast by those persons, partnerships, or corporations who are authorized to vote as property owners or leaseholders of the City shall be deposited in the other such ballot box. The polling places shall be open from 12:00 Noon, prevailing time, until 7:00 in the evening, prevailing time, on the date set for the Special Election.

Section 4. Amend the Charter of the City of Lewes as follows:

ACTIONS OR SUITS AGAINST CITY OFFICERS OR EMPLOYEES

Section 40.

(a) For purposes of this section, the term "City officers and employees" includes the Mayor and Councilpersons, all appointed members of commissions, boards, committees, and working groups established by the City Council. The term "City officers and employees" does not include attorneys, contractors, consultants, engineers, advisors, or other individuals providing services to the City.

(b) The City shall defend any City officer or employee against a civil claim, other than a civil claim brought by or with the concurrence of the City, brought in any court, quasi-judicial, or administrative proceeding, arising out of or related to the performance by said officer or employee of his public, official duties. The City may defend any City officer or employee against a criminal charge arising out of or related to the performance of his or

her public, official duties provided that the charge does not allege official misconduct, profiteering, bribery, receiving unlawful gratuities, improper influence, or other misuse of the City officer or employee's office or employment. The Mayor and City Council shall decide whether to offer to defend a City officer or employee in a criminal proceeding as soon as practicable after a City officer or employee makes a request for such defense in writing. If the City has offered to defend a City officer or employee, the employee may select the employee's own attorney to defend the employee against the civil claim or criminal charge with the concurrence of a majority vote of the Mayor and City Council, if the City's insurance carrier requires such concurrence through a relevant insurance policy.

(c) The City shall indemnify any City officer or employee who is held liable for the payment of any compensatory or punitive damages arising out of a civil claim, or settlements, judgments, expenses, costs, and awards of attorneys fees arising therefrom, where the civil claim was determined by a majority vote of the Mayor and City Council in its sole and exclusive discretion to have resulted from the discharge of public, official duties for which all of the following apply:

- (1) Were done in good faith.
- (2) Were done in the reasonable belief that the City officer's or employee's actions were in the best interest of the City, and in the furtherance of the official practices and policies of the City.
- (3) Were within the scope of authority of the City officer or employee.
- (4) Were within the course of employment of the City officer or employee.
- (5) Were not willful, malicious, or wanton.

(d) In addition to the City's indemnification of City officers and employees, the Mayor and City Council may authorize the City Manager, on behalf of the City, to enter into contracts of insurance for the defense and indemnification of City officers and employees who are determined to be entitled to defense and indemnification under Section 40 of this Charter, or for such broader coverage as the City Manager deems advisable.

(e) The Mayor and City Council may, upon resolution, and in their sole and exclusive discretion, authorize the payment of legal fees incurred by a City officer or employee for representation in a criminal action, if the charge arose out of or in the discharge of public, official duties. The Mayor and City Council shall review an application for reimbursement based upon the criteria set forth in subsection (c). In no event shall any payment under this section be authorized where the City officer or employee has been found guilty of, after trial and any appeal, or has entered a plea of guilty or nolle contendere to, a crime involving a breach of public trust.

Section 5. If any provision of this Act is be deemed or held to be invalid or unenforceable for any reason whatsoever, the invalidity or unenforceability does not affect any other provision of this Act that may be given effect without the invalid or unenforceable provision, and, to this end, the provisions of this Act are hereby declared to be severable.

Approved August 30, 2017